The Flinn Report

Regulation

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Joint Committee on Administrative Rules

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Illinois General Assembly

www.ilga.gov/commission/jcar

VOL. 29

January 14, 2005

Issue 3

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

LAYOFFS & PLANT CLOSINGS

The DEPARTMENT OF LABOR adopted a new Part titled "Illinois Worker Adjustment and Retraining Notification Act" (56 III Adm Code 230) by emergency rulemaking, effective 1/1/05, for a maximum of 150 days. An identical proposed rulemaking appears in this week's issue of the Illinois Register. The rulemakings implement Public Act 93-915, which requires certain employers to give 60 days noticed to employees before a mass layoff or plant closing takes effect after 1/1/05. Notice must also be given to the Department of Commerce and Economic Opportunity, the Department of Labor, and the chief elected official of each municipal and county government within which the mass layoff or plant closing will occur. "Employer" is defined as "NURSING HOMES any business enterprise that employs 75 or more employees, excluding part-

time employees, or 75 or more employees who in the aggregate work at least 4,000 hrs./wk. exclusive of overtime hours. However, federal, state, and local governments; school districts; and charitable or tax-exempt institutions and organizations are exempted from the definition. Other topics covered in the new Part include notice content, complaint procedures, complaint investigations, enforcement, penalties, informal investigative hearings, and formal administrative hearings.

Questions/requests for copies/comments concerning the proposed rulemaking until 2/28/05: Valerie A. Puccini, DOL, 160 N. LaSalle St., 13th Fl., Chicago IL 60601, 312/793-7838, Fax 312/793-5257.

The DEPARTMENT OF PUBLIC AID

adopted an emergency amendment for "Long Term Care Reimbursement Changes" (89 III Adm Code 153), effective 1/1/05, for a maximum of 150 days. An identical proposed rulemaking appears in this issue of the Illinois Register. The amendments implement the portion of Public Act 93-841 that, beginning 1/1/05, increases skilled nursing facilities' and intermediate care facilities' reimbursement rates by 3% over the rates that were in effect on 12/31/04. Those affected by these rulemakings include Medicaid-funded nursing facilities.

Questions/requests for copies/comments concerning the proposed rulemaking until 2/28/05: Joanne Scattoloni, Department of Public Aid, 201 South Grand Avenue East, 3rd Floor, Springfield Illinois 62763-0002, 217/524-0081.

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

": Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act

JCAR Meeting Action

At its January 11, 2005 meeting, the Joint Committee on Administrative Rules voted the 5 Objections coupled with 5 Filing Prohibitions, 4 Recommendations, and one Failure to Remedy listed below.

DEPARTMENT OF PUBLIC HEALTH

JCAR objects to, and prohibits the filing of, DPH rulemakings titled "Manufactured Home Community Code" (77 III Adm Code 860; 28 III Reg 1652), "Illinois Manufactured Home Tiedown Act" (77 III Adm Code 870; 28 III Reg 1674), "Manufactured Home Installation Code" (77 III Adm Code 870; 28 III Reg 2613), "Illinois Modular Dwellings and Mobile Structures Code" (77 III Adm Code 880; 28 III Reg 1684), and "Manufactured Home Installer Course Accreditation Code" (77 III Adm Code 885; 28 III Reg 1717). Considerable uncertainty appears to exist regarding the viability of some of the standards that are part of this package of 5 rulemakings. While the agency has responded to some of the points raised by commentors, not all affected parties have had knowledge of, and an opportunity to discuss with the Department, all the changes the Department is offering to make. The Department has indicated that it is willing to consider further modifications in its proposals to make them as clear and technically feasible as possible. JCAR has determined that the public interest will not be served by adoption of this package of rulemakings until the remaining issues have been resolved. However, the 1year time period the Illinois Administrative Procedure Act (IAPA) prescribes for completion of a rulemaking process terminates 1/29/05 for 4 of the 5 rulemakings in this package and 2/12/ 05 for the fifth. To afford DPH and the affected parties more time to resolve the remaining issues with this package of rulemakings, JCAR objects to the rulemakings and prohibits their filing in the current form. This will stop the tolling of the 1-year rulemaking process. The Committee additionally requests that the Department appear at the February JCAR meeting to report on any progress that has been made on the unresolved issues.

DEPT OF NATURAL RESOURCES

JCAR recommends that DNR make the provision of its rulemaking titled "Injurious Species" (17 III Adm Code 805; 28 III Reg 12554) banning transportation and possession of bighead and silver carp effective on May 1, 2005 to give bighead carp producers adequate time to legally market this year's crop that is being raised for the Chicago live-fish market. Nothing in this Recommendation should be interpreted as forbidding DNR from banning immediately the release of bighead and silver carp into the waters of Illinois. JCAR further recommends that, while not an issue in this rulemaking, the Department take note of the Illinois Administrative Procedure Act requirement [5 ILCS 100/5-40(b)(3.5)] that an agency's 1st Notice published in the Illinois Register include specific information concerning any published study or research report used in developing the rulemaking and, if the agency performed or contracted for the study, copies of the relevant underlying data must also be made available to the public. DNR response to public comment concerning this rulemaking suggests the agency may not understand the intent of Section 5-40(b)(3.5) of the IAPA.

STATE UNIVERSITIES RETIRE-MENT SYSTEM

Concerning "Universities Retirement" (80 III Adm Code 1600; 28 III Reg 4161), the Committee recommends that the State University Retirement System seek specific statutory authority for the Section 1600.12(g) rule provision allowing near-term retirees to employ a calendar year final rate of earnings computation. These employees are currently required to use an academic year computation method by Section 15-212 of the Personnel Code.

DEPT OF CENTRAL MANAGEMENT SERVICES

The Committee considered emergency amendments for "Acquisition, Management and Disposal of Real Property" (44 III Adm Code 5000; 28 III Reg 15686) and recommends that the Department of Central Management Services review its companion proposed rulemaking and Part 5000 generally and clarify its currently confusing policies allowing "displays" expressing Constitutionally protected free speech (Section 5000.930(f)(1)) yet barring political/religious "exhibits" (Section 5000.950(c)). JCAR further recommends that DCMS add to this Part the standards it will apply in determining whether it will grant or deny a permit.

STATE BOARD OF ELECTIONS

Concerning emergency rules adopted by the Board titled "Administrative Complaint Procedures for Violations of Title III of HAVA" (26 III Adm Code 150; 28 III Reg 15840), JCAR recommends that the Board of Elections, prior to submitting Second Notice to JCAR for its companion proposed rulemaking, review and address the Joint Committee's concerns about its proposed rules, especially the provision that places all costs for dispute resolution services on the complainants. (HAVA is the federal Help America Vote Act.)

DEPARTMENT OF PUBLIC AID

At its 9/14/04 JCAR meeting, the Committee issued a Recommendation concerning DPA amendments for "Medical Assistance Programs" (89 III Adm Code 120; 28 III Reg 3685). JCAR recommended that the Department seek a statutory amendment to clearly authorize the Statewide average rate approach at the 125% level for determining the cost of providing community-based services for medi-

JCAR Meeting Action (cont'd)

cally fragile/technology-dependent disabled children. DPA's response to the Recommendation maintains that a statutory amendment is unnecessary as federal regulations allow states to use individual rate caps for pur-

poses of cost determination under the federal waiver authorizing the services if the waiver is cost-neutral in the aggregate. Therefore, the Committee will publish a Notice of Failure to Remedy in the *Illinois Register* be-

cause DPA's response to the Recommendation does not address the fact that Illinois statute applies an individual rate cap of no more than the cost of institutional care.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's 2/17/05 meeting in Springfield.

DEPARTMENT OF NATURAL RESOURCES

"The Taking of Wild Turkeys – Spring Season" (17 III Adm Code 710) proposed 11/12/04 (28 III Reg 14751)

"Special Wildlife Funds Grant Program" (17 III Adm Code 3060) proposed 11/12/04 (28 III Reg 14769)

DEPARTMENT OF HUMAN SERVICES

"General Administrative Provisions" (89 III Adm Code 10) proposed 8/13/04 (28 III Reg 11643)

"Temporary Assistance for Needy Families" (89 III Adm Code 112) proposed 7/30/04 (28 III Reg 10505)

"Temporary Assistance for Needy Families" (89 III Adm Code 112) proposed 8/13/04 (28 III Reg 11656)

"Aid to the Aged, Blind or Disabled" (89 III Adm Code 113) proposed 9/3/04 (28 III Reg 12400)

"Support Responsibility of Relatives" (89 III Adm Code 20) proposed 8/13/04 (28 III Reg 11651)

Repeal of "Hemophilia Program" (77 III Adm Code 705) proposed 3/12/04 (28 III Reg 4429)

"General Assistance" (89 III Adm Code 114) proposed 7/30/04 (28 III Reg 10519)

"Food Stamps" (89 III Adm Code 121) proposed 7/30/04 (28 III Reg 15031)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Pay Plan" (80 III Adm Code 310) proposed 10/29/04 (28 III Reg 13949)

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